



INTERIOR BOARD OF INDIAN APPEALS

Paiute Indian Tribe of Utah v. Western Regional Director, Bureau of Indian Affairs

40 IBIA 208 (01/10/2005)

Related Board case:
39 IBIA 261



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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PAIUTE INDIAN TRIBE OF UTAH,	:	Order Dismissing Appeal
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 04-112-A
ACTING WESTERN REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	January 10, 2005

The Paiute Indian Tribe of Utah (Tribe) appealed from the failure of the Acting Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to make a decision or to set a date for making a decision on the Tribe's fee-to-trust application for a 1.72 acre tract of land located in Richfield, Utah. The application was submitted on behalf of the Koosharem Band of Paiute Indians of Utah, a constituent Band of the Tribe. Pursuant to 25 C.F.R. § 2.8, the Tribe submitted a request, dated May 11, 2004, to the Regional Director, for a decision on its application. 1/ On May 24, 2004, the Regional Director responded to the Tribe, but did not issue a decision or set a date for making a decision. The Tribe appealed, contending that the Regional Director's response did not comply with the requirements of section 2.8. For the reasons discussed below, the Board dismisses this appeal. 2/

Upon receipt of the appeal, the Board questioned whether it was appropriate to assert jurisdiction, in light of the Regional Director's May 24 response to the Tribe, but requested a status report from the Regional Director. After submitting an initial status report in July 2004, the Regional Director submitted a second status report in September 2004. In his September status report, the Regional Director states that in August 2004, he submitted a favorable draft "decision analysis" for the Tribe's application to the Assistant Secretary - Indian Affairs

1/ Section 2.8 of 25 C.F.R. provides a mechanism for appealing from inaction by a BIA official, after the appellant has requested action pursuant to the requirements of section 2.8.

2/ The Board dismissed an earlier 25 C.F.R. § 2.8 appeal by the Tribe concerning the same fee-to-trust application, based on a letter from the Regional Director to the Tribe that he needed more information before the matter would be ripe for a decision. Paiute Indian Tribe of Utah v. Western Regional Director, 39 IBIA 261 (2004).

(Assistant Secretary), for review. According to the Regional Director, a February 5, 2002, policy issued by the Deputy Assistant Secretary - Indian Affairs, requires that applications for the trust acquisition of off-reservation lands, such as the application involved in this case, must be submitted to the Office of the Assistant Secretary for review, before the Regional Director is permitted to make a decision to approve an application. Because the package has not yet been returned by the Assistant Secretary, the Regional Director contends that the matter is not ripe for him to make a final decision.

In response, the Tribe objects to a dismissal, but does not dispute the Regional Director's assertion that this fee-to-trust application requires review by the Office of the Assistant Secretary before the Regional Director may approve the application. Rather, the Tribe argues that the Board should retain jurisdiction to ensure that the Regional Director will take further action on the application after he has received the necessary clearance from the Assistant Secretary.

Whether or not the Regional Director's May 24, 2004, response to the Tribe was sufficient to comply with 25 C.F.R. § 2.8 — an issue that has been rendered moot by subsequent developments — the Board concludes that this appeal should now be dismissed. The Tribe's arguments to the contrary are unconvincing. The Regional Director has satisfactorily explained that he has completed as much action on the Tribe's application as he presently is allowed, and is awaiting authorization from the Assistant Secretary to take further action. Although 25 C.F.R. § 2.8 is an action-prompting provision, the Board does not construe it as authorizing appellants to maintain an appeal throughout BIA's deliberative decision-making process, even when the BIA official, whose earlier alleged "inaction" has been appealed, has subsequently completed as much action on a request as is allowed or required under the circumstances, and when the official's ability to issue a final decision is contingent upon action by a third party. ^{3/} We agree with the Regional Director that the matter is not ripe for him to make a final decision, and conclude that this section 2.8 appeal should be dismissed. Cf. Paiute Indian Tribe of Utah v. Western Regional Director, 40 IBIA 163, 164 (2004) (section 2.8 appeal dismissed where matter was not ripe for Regional Director to make a decision); Paiute Indian Tribe of Utah v. Western Regional Director, 40 IBIA 141, 142 (2004) (section 2.8 appeal dismissed where Regional Director had issued a decision, and the additional steps required to complete the trust acquisition were not yet ripe).

^{3/} Dismissal of this case is also consistent with the Board's practice in other appeals brought pursuant to 25 C.F.R. § 2.8, when the evidence indicates that BIA is acting on an appellant's request. See, e.g., Big Valley Band of Pomo Indians v. Pacific Regional Director, 36 IBIA 48 (2001); Williams v. Phoenix Area Director, 33 IBIA 22 (1998); Hackford v. Phoenix Area Director, 30 BIA 270 (1997); Shahook Group of Capitan Grande Band of Diegueno Mission Indians v. Director, Office of Tribal Services, 27 IBIA 43 (1994).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal.

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Colette J. Winston
Administrative Judge